

Remarks

Claims 1-75 are in the case. Claims 1-5, 13-35, and 66-75 stand rejected. The grounds of rejection are traversed. Claims 6-12, 36-42 and 59-65 are objected to as depending from a rejected base claim.

Rejections under 35 USC §102(b)

Independent claims 1, 22 and 52 have been rejected under 35 USC 102(b) as being anticipated by Mindes. For the reasons set forth below, applicant is of the view that the invention disclosed in Mindes differs significantly from the inventions of claims 1, 22 and 52. As with the Examiner's first office action, applicant is under the belief that the differences between the present invention and the cited reference are not readily apparent due to the length and complexity of the specifications and the abstract nature of the technologies, but that the differences become very distinct upon further review.

Applicant respectfully suggests that Mindes is non-enabling for applicant's invention. A prior art reference under 35 USC 102(b) must be enabling, thus placing the allegedly disclosed matter in the possession of the public. *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1 USPQ.2d 1241, 1245 (Fed. Cir. 1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ.2d 1001, 1010 (Fed. Cir. 1991). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 48 USPQ.2d 1321, 1328 (Fed. Cir. 1998).

While Mindes has some superficial similarities to applicant's invention (betting on sporting events; allowing bets to be placed while the sporting event is in progress; providing the game over a network), Mindes cannot be construed as placing applicant's invention in the possession of the public. Mindes differs from applicant's invention in at least six fundamental respects: (1) Mindes does not use parimutuel style wagering (he uses fixed odds, which are set at the time the bet is placed); (2) Mindes does not use betting lines that have "OCOC . . . OCT" sequences (Mindes uses betting "pools" that simply open and terminate, as in conventional bookie sports wagering); (3) Mindes does not use unconstrained betting lines (Mindes uses conventional binary betting pools, i.e. the only betting options are "A" (Team A minus 6) or "Not A" (Team A wins by less than 6)); (4) Mindes does not use unconstrained parimutuel accounting (the primary objective of his system is to provide balanced books); (5) Mindes does not disclose wagering on a plurality of betting events within a single sporting event (he offers only one event, i.e. the point spread by which a team will win the game); and (6) Mindes does not use bonuses.

As an example of nonenablement by Mindes, applicant will focus on the OCT sequence previously discussed. Mindes employs a plurality of Open-Close sequences within a conventional binary sports betting system, i.e. players select between "A" or "Not A." Claims 1, 22 and 52 claim a completely different form of pari-mutual betting that employs conducting a plurality of betting events within a sports event, as well as multiple betting lines within each betting event. The sequences of the betting events have the following novel form

$$O(1) < C(1) = O(2) < C(2) = O(3) < C(3) . . . < C(n-1) = O(n) < T,$$

which is referred to as a "cycle." Applicant's disclosure of cycles in the OCT sequencing is a new concept. Playing ten of Mindes betting pools is not the same as an OCT cycle that opens and closes ten times. Additionally, with applicant's invention, betting lines for different betting events (e.g., DRIVE, QUARTER SCORE, WINNER, etc.) can be and preferably are open at any given time.

The distinctions can be discussed in less abstract terms by looking at applicant's discussion of a DRIVE betting event during a football game. As discussed in applicant's specification, in a DRIVE betting event during a football game, a new betting line opens whenever the driving team gets a new set of downs, and possibly at other times as well. Each time a new line opens, the previous line closes, so $C(i) = O(i+1)$. The last line in each cycle terminates before it has a chance to close. This triggers all the lines that opened during that drive (all the lines in that cycle) to pay off simultaneously. Applicant's invention uses numerous cycles of each betting event (with a different number of betting lines in each cycle) in each game, e.g., there could be 20 or 30 DRIVE cycles in a typical football game. Each DRIVE cycle typically consists of several (one to ten) OC pairs. On the other hand, the WINNER event (see figure 8E) consists of only 1 cycle, which terminates at the end of the game. Although the WINNER event is only one cycle, the WINNER event will typically have a dozen or more OC pairs in its cycle. There are numerous OCT rounds going on simultaneously, i.e., one for each betting event. A new line can be opened whenever the odds on the final outcome of the betting event suddenly change, or for other reasons. This allows

players to change their minds as events unfold in the game, but rewards players who guess correctly early in a cycle.

The purpose of the novel OCT sequencing of the present invention is to keep the payoff odds synchronized with the game on the field. This outcome is not contemplated by Mindes system, in which the odds are fixed at the time the player places a bet. Thus, OCT sequences are but one example of why Mindes is nonenabling of applicant's invention.

Additionally, anticipation under 35 USC 102(b) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindermann Maschinenfabrick GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984); MPEP § 2131. The prior art reference must be such that a person of ordinary skill in the field of the invention would consider there to be no difference between the claimed invention and the reference disclosure. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ.2d 1001, 1010 (Fed. Cir. 1991). The prior art reference must put the claimed invention in the hand of one skilled in the art. *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985).

For example, Mindes does not disclose paying off winners in parimutuel style, as claimed in independent claims 1, 22, and 52. For this reason alone, applicant's independent claims are not anticipated by Mindes. In fact, Mindes specifically clarifies that his system is not a parimutuel system when he states, in the Background of the Invention section: "This is different than the situation in race track betting where a parimutuel system is used, where all wagers on the same contestant have the same terms, and the player does not know the odds he will receive when he makes his wager, but learns the odds only after all wagers have been placed." (Mindes, Col.

2:31-36). This is the only place in the Mindes specification where parimutuel betting is mentioned. Throughout the Mindes specification, his invention is described only in terms of a conventional binary betting system in which players select between two choices, “A” or “Not A.” In Mindes’ system, the odds are fixed at the time of the bet, and they do not change once the bet has been placed. This is markedly different from a conventional parimutuel system, in which players place money on each of a finite number of choices and the odds fluctuate in accordance with the amount of money bet on each choice. In applicant’s OCT parimutuel sequences, the odds further fluctuate during the course of the betting event. For example, if the Broncos start a drive on their own 1 yard line, the odds may be 1:20 that the drive will end in a touchdown, i.e. a touchdown is very unlikely. If the Broncos subsequently move the ball down the field during the drive until they have a first and goal on the opponent’s one yard line, the odds that the drive will end in a touchdown may flip to 40:1, i.e. the drive is almost certain to end in a touchdown. This type of parimutual system is not disclosed in Mindes, and would not work in Mindes “balanced” books system.

Because Mindes does not teach parimutuel style payoffs, Mindes also does not disclose other claimed features, such as conducting a plurality of betting events; the betting events being based on bettable events occurring during the sporting event; and repeating the process of conducting betting events until the sporting event has concluded.

Because Mindes does not disclose each and every element of the claimed invention, and also does not disclose elements arranged as in the claims, it is respectfully submitted that a *prima facie* case of anticipation under 35 USC 102(b) has not been established as to independent claim 1, 22, 52.

Applicant also notes that claims involving the assignment of bonuses at the opening of a betting line have been rejected as anticipated (claims 2, 19, 22-24, 28, 32, 49, 55, and 72). The use of bonuses is not mentioned in Mindes. As discussed in applicant's specification, betting line bonuses alter the dynamics of applicant's PBG-based invention by encouraging players to bet early, before a betting line closes. In Mindes, there is no counterpart to the bonus function, nor is there a need for one.

Objections to the Claims Regarding Dependency

Claims 6-12, 36-42, and 59-65 have been objected to as being dependent upon a rejected base claim, but the Examiner has indicated that these claims would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. In view of applicant's position concerning Mindes (above), applicant respectfully requests leave to hold in abeyance the amendments to incorporate the limitations of the base and intervening claims into claims 6-12, 36-42 and 59-65.

Conclusion

For the foregoing reasons, applicant suggests claims 1-75 are now in a condition for allowance, and respectfully requests same. If the Examiner concludes that a telephone interview would facilitate examination of this application, undersigned would welcome such a conference. It is believed that this response has been filed within the applicable time period for responding and that no extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502346.

Respectfully submitted,



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